

## REPORT to the KITTERY TOWN COUNCIL

RESPONSIBLE INDIVIDUAL: Beers

Date: Jul 03, 2011

Subject: Frisbee Wharf Replacement Funding (update of June 15, 2011 Report)

### Background:

- KPA Report to Council – Workshop June 13, 2011 (not encl)
- KPA Fisherman's Committee report (Philbrook, Workshop 06/23/11) that the BIG replacement of the wharf would irreparably harm the local fishing industry
  - Expressed ideal solution would be to have approval for the BIG shift to take place in 013-14; relief of the 20-year SHIP obligation; and soonest replacement of the Wharf
- Council favored the project shift contingent on:
  - Federal and State approval of the shift and resolution of the 20-year Ship obligation in writing
  - Application to Maine Department of Marine Resources (Contractor – Coastal Enterprises Incorporated) for Working Waterfront Access Pilot Program funding for the Wharf replacement (encl 1)
  - Requires a covenant be provide by the property owner
    - Frisbee deeds require Town to retain "wholly for public usage"
    - Kittery Title 16 zoning for Kittery Point Village and the overlay zone do not allow commercial development consistent with State covenant requirements
- KPA BIG approved to change the existing configuration (Aerial photo encl 1 and Existing Conditions drawing encl 2) to accommodate larger craft recreational boaters (encl 3)
- KPA's revised configuration proposal shifts the BIG project to the Fishermen's Pier (encl 4)
- Engineering estimate for proposed Frisbee work costed at \$353,231, an increase over original estimate of \$103,231 (encl 5). No funding is shown for demolition of existing Wharf.
- New Frisbee Wharf alignment is parallel to, and more separated from Fishermen's; and, existing Wharf remains in place for use until new one is complete.
- Council deliberation on Jun 20<sup>th</sup> resulted in addition of \$1.00 to the FY122 CIP budget reserved to Account 1760, Capital Holding, Pier Maintenance Reserve in support of the prior report Option 7's no tax rate impact approach.

### Current Situation:

- Milton Hall e-mail, 06/24/11 raised some points that deserve further expansion and clarification (encl 6). For the sum of those and all related circumstances, it must only be seen as prudent to approve this proposal.

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- As the KPA is a separate quasi-governmental entity, an interagency memorandum of understanding should be executed with the Town, making clear that appropriate user fees for launch, fuel, pumpout, waste disposal , or other provided services, in addition to their current customary fees must be established and that annual revenue in excess of approved expense is to be dedicated to capital program reimbursement; and ,that any capital campaign or other outside funding (e.g. WWAPP, TIF) received must be used for the project before local funds (encl 7).
- Due to certain information not being received in time for WWAPP submission by the first deadline, July 1<sup>st</sup>, KPA expects to file for the 2<sup>nd</sup> go-around, November 1<sup>st</sup>. KPA Chairman Carson has spoken to BMR/CEI who expressed a willingness to work with Kittery and that funding "should be" available.
  - Property appraised value (rec'd 07/02/11)
  - Statement re deed covenant approved by Council

### Recommendation:

(Town Manager preferred) Fund Project with a 5-year Municipal Lease-Purchase loan, as amended and approved in the FY12 Town CIP budget.

- Re-payment of the loan to come from the dedicated CIP Capital Holding Reserve (1760) Pier Maintenance Account (present balance of \$80,000 retained for BIG Grant match).
- Fund the first payment in FY12 with FY11 (current year) Grant Match Account year-end transfer; then in FY'13,14,15,16, dedicate sufficient Harbor operation fee revenues to the Capital Reserve Account to pay for the loan.

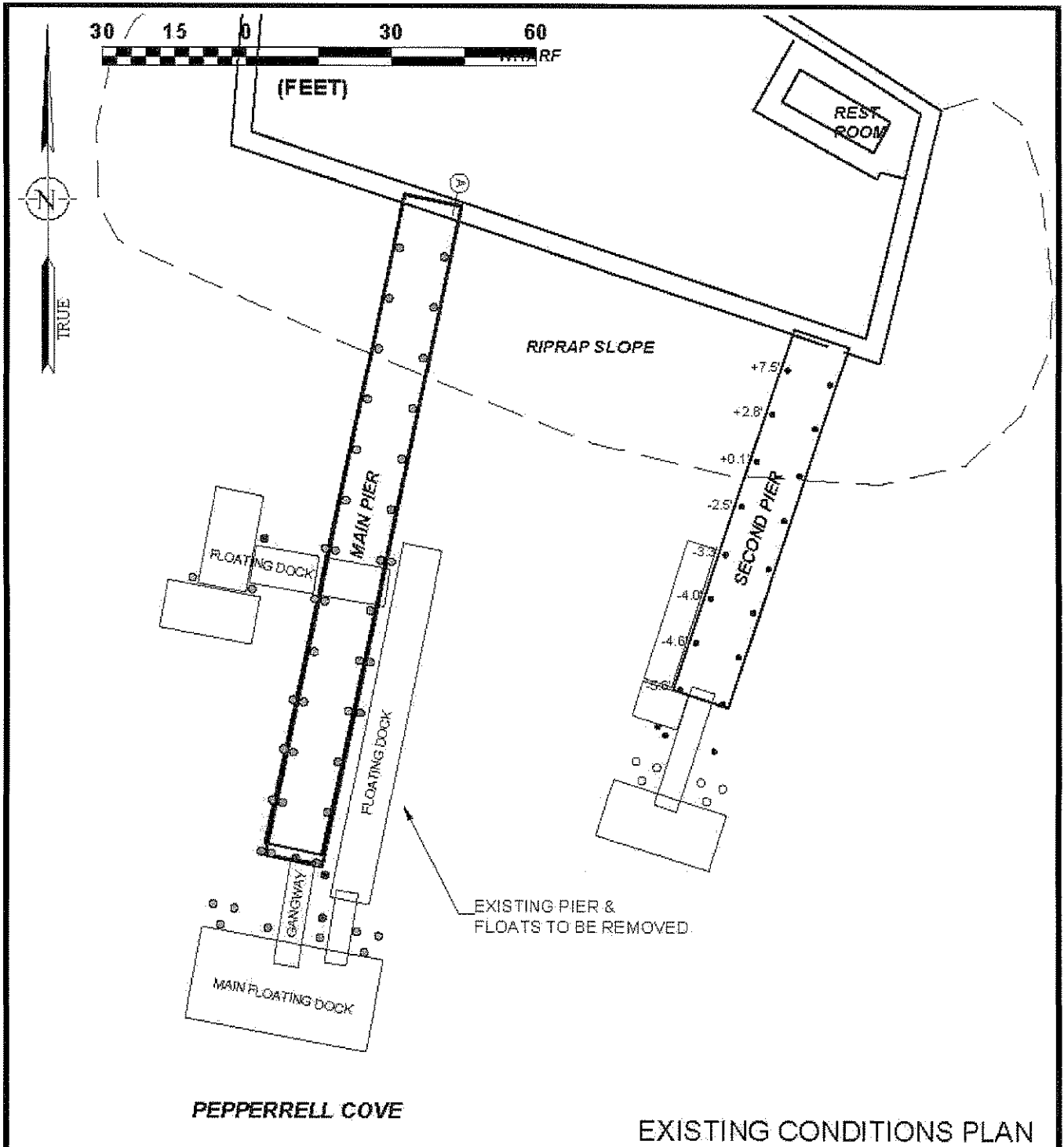
### MOTION LANGUAGE

**"The Kittery Town Council moves to approve a replacement project for the Frisbee Wharf in an amount not to exceed \$353,231 to be funded by a five-year municipal lease-purchase loan, contingent upon Port Authority execution with the Town of a memorandum of agreement, as presented."**

**NOTE:** The actual loan agreement must be enacted by ordinance. Those documents, the proposed lease-purchase agreement, proposed construction contract, proposed deed covenant, and the executed MOU, would be presented to Council when ready.

Enclosure 1 - 070311





**WATERFRONT ENGINEERS  
LLC**



3 LINDA LANE  
STRATHAM, NH 03885  
(603) 772-3706

[www.waterfrontengineers.com](http://www.waterfrontengineers.com)

**PEPPERRELL COVE  
TRANSIENT BOATING  
INFRASTRUCTURE  
IMPROVEMENT PROJECT**

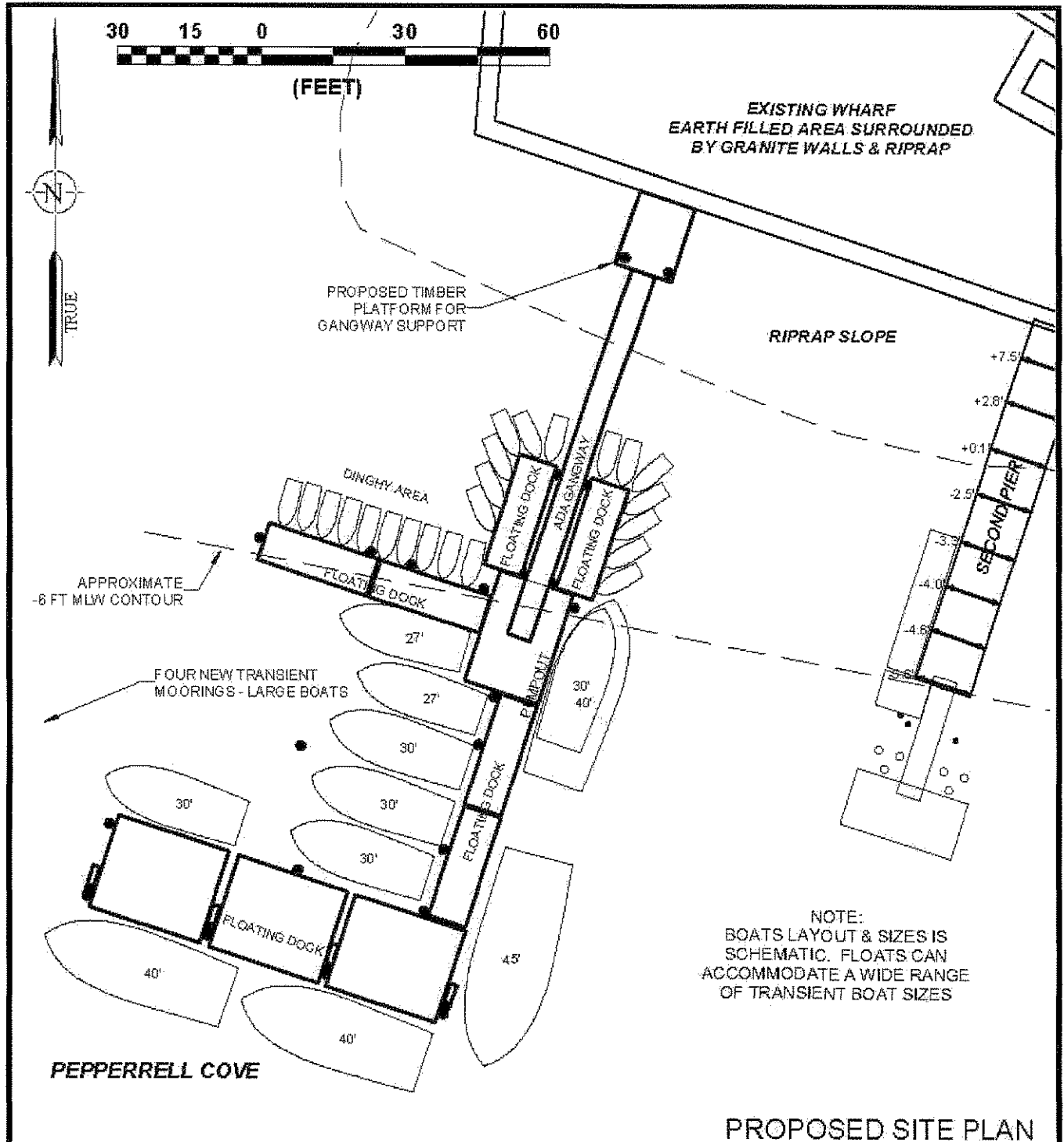
PEPPERRELL COVE  
KITTERY POINT, MAINE  
YORK COUNTY  
SEPT. 15, 2010

APPLICANT:

**TOWN OF  
KITTERY  
&  
KITTERY PORT  
AUTHORITY**



**SHEET 1 OF 2**



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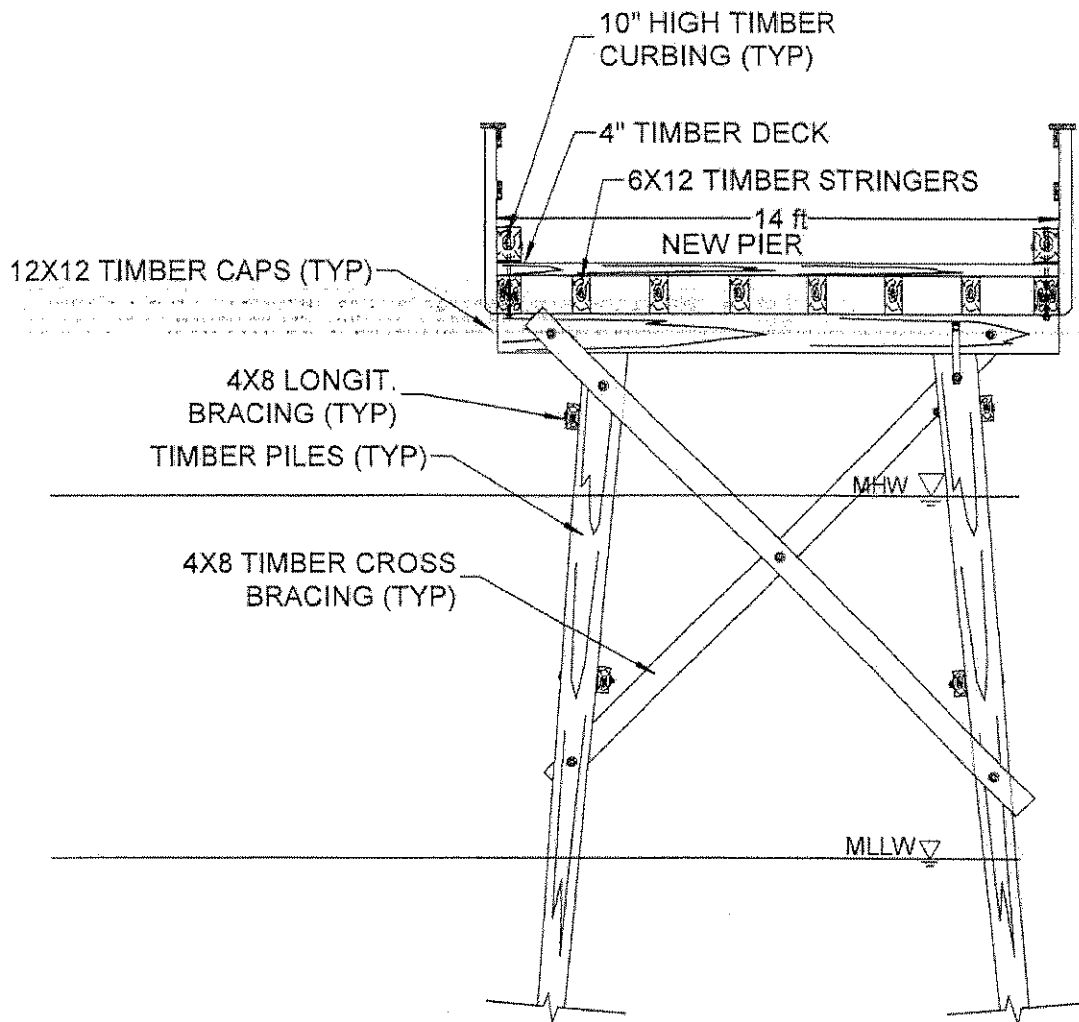
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**SHEET 2 OF 2**







ENGINEERS OPINION OF PROBABLE COST		DATE PREPARED June 20, 2011		SHEET 1 OF 3				
Pepperrell Cove Commercial Pier Town of Kittery; Kittery Port Authority Kittery Point, Maine		 <b>WATERFRONT ENGINEERS LLC</b> 3 Linda Lane Stratham, NH 03885						
TIMBER PIER 14'x140' (base pier only)		<input type="checkbox"/> 85% (DRAFT) <input type="checkbox"/> 100% (FINAL) <input checked="" type="checkbox"/> OTHER (budget)						
ITEM DESCRIPTION	QUANTITY		MATERIAL COST		LABOR/EQUIP COST		ENGINEERING ESTIMATE	
	NUMBER	UNIT	UNIT COST	TOTAL	UNIT COST	TOTAL	UNIT COST	TOTAL
<b>Phase 1: Work by marine contractor</b>								
Mob & demobilization (truck & barge)	1	LS	\$1,000	\$1,000	\$10,000	\$10,000	\$11,000	\$11,000
1. Fender pile SYP CCA	18	EA	\$576	\$10,368	\$900	\$16,200	\$1,476.00	\$26,568
2. Support/guide pile timber SYP CCA	40	EA	\$720	\$28,800	\$1,320	\$52,800	\$2,040	\$81,600
3. Pile cap 12x12x12' SYP	14	EA	\$294	\$4,113	\$926	\$12,960	\$1,219	\$17,073
4. Pile cap at seawall	1	EA	\$400	\$400	\$1,000	\$1,000	\$1,400	\$1,400
5. Stringers 6x12x22' SYP No. 2 Dense	49	EA	\$269	\$13,195	\$264	\$12,960	\$534	\$26,155
6. Rangers double 4x12x20' SYP No. 2	14	EA	\$144	\$2,016	\$347	\$4,860	\$491	\$6,876
7. Hoist rangers 12x12x12'	2	EA	\$242	\$484	\$567	\$1,134	\$809	\$1,618
8. Cap/pile drift pins, straps, lags	28	EA	\$7	\$202	\$6	\$168	\$13	\$370
9. Cap/stringer drift pins	105	EA	\$6	\$630	\$6	\$630	\$12	\$1,260
10. Ranger splice bolts 7/8" dia.	140	EA	\$16	\$2,184	\$16	\$2,240	\$32	\$4,424
10A. Substructure bolts 1" dia.	210	EA	\$18	\$3,780	\$18	\$3,780	\$36	\$7,560
11. Transverse bracing 4x8x16'	28	EA	\$83	\$2,322	\$231	\$6,480	\$314	\$8,802
12. Longit. cross braces 4x8x18'	14	EA	\$93	\$1,306	\$231	\$3,240	\$325	\$4,546
13. Ladder	2	EA	\$2,000	\$4,000	\$675	\$1,350	\$2,675	\$5,350
14. Ladder supports 6x12x12'	4	EA	\$138	\$553	\$432	\$1,728	\$570	\$2,281
15. Hoist frame modifications & reinstall	1	LS	\$7,000	\$7,000	\$7,000	\$7,000	\$14,000	\$14,000
16. Field treat. Pres., falsewk & incidentals	1	LS	\$3,800	\$3,800	\$0	\$0	\$3,800	\$3,800
							Subtotal	<b>\$224,683</b>
Bonding (3%) If required								\$6,740
Construction contingency (assume 15%)								\$33,702
							Page 1 Total	<b>\$265,125</b>

This is an engineers opinion of probable construction cost. Waterfront Engineers LLC has no control over the cost of labor, materials, equipment or services furnished by others or over the Contractor(s) methods of determining prices or over competitive bidding or market conditions. Waterfront Engineers LLC cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from this opinion of probable cost.







1 *"All Concerned:*

2 *The idea of staying with the Frisbee Town Pier is the right way to go. Thus avoiding any court actions on*  
3 *the part of the Frisbees on the deed covenants to the town. As for the pier falling apart in the immediate*  
4 *future, is just a scare tactic. Cleats on the gangway have nothing to do with the pier!!!!!! The "Town*  
5 *Voters" gave the Port Authority \$20,000 in 2009 to fix up the pier for five more years and the Kittery Town*  
6 *Wharf \$20,000 in 2009 for ten more years. Pickering Marine took care of both jobs. So 2014 is the*  
7 *replacement date for Frisbee Town Pier. Thus the town was putting in \$40,000 per year for Five Years to*  
8 *replace same. Looks like we are getting way off course in calm waters??? M. Hall"*

9  
10 If memory serves:

11  
12 Following the Patriots Day storm of 2007 the Frisbee Wharf was condemned and access was shut off to  
13 all users. After some sistering of stringers with common building materials beneath the deck, the wharf  
14 was deemed safe for use.

15  
16 The KPA seems to have been well aware of the deteriorated condition of the Frisbee Wharf but  
17 apparently started no planning nor held any substantive discussion regarding the expected lifespan of the  
18 57 year old structure. KPA meeting minutes do not suggest that the repairs to Frisbee Wharf extended  
19 the life beyond the 3 to 5 years suggested on several occasions at KPA meetings.

20  
21 Town Council at some point during 2007-08 appropriated \$40,000 for pier maintenance before the CIP  
22 committee was formed. In February 2009, the KPA contracted with Riverside Marine for repair of the  
23 Government St. town pier at a cost around \$20,000.

24  
25 Waterfront Engineers report, January 21, 2008 reflects Wharf inspection in 2007, concluding that it  
26 needed \$92,000 worth of repair that could extend its life as much as ten years. In May of 2009 new  
27 cross bracing was installed on the pilings supporting Frisbee Wharf and new bolts installed to secure the  
28 main ramp. The cross bracing installation and stringer bolting cost approximately \$2,600.

29  
30 Mr. Hall's observations do not address several important factors:

31  
32 1) Using Fisherman's shorter pier for the BIG float extension, and realigning Frisbee, result in an optimal  
33 configuration over what exists and what was originally planned by KPA. It allows use of the existing  
34 structure until the new one is completed. It is regrettable that this was not proposed by KPA from the  
35 beginning, as these projects could have been addressed more timely in the CIP.

36  
37 2) The \$40K raised in CIP each of the last two years is reserved for town match for the BIG  
38 improvements which will also need another \$10K from annual grant match funds. Federal approval is  
39 needed for the switch, and if allowed we must be prepared to complete the BIG recreational boating  
40 project when the funds become available, or the grant would be lost.

41  
42 3) Waiting until 2014, with the questionable structural integrity of the Frisbee Wharf, is not prudent as  
43 the 2009 work little addressed all needs shown in the 2007 report. A single Patriot-Day-scale storm could  
44 well take it out and require emergency attention. It is no stretch to imagine that happening at the worst  
45 possible time, impacting a complete summer season at the end of an annual budget during the  
46 foreseeable peak capital debt service years.

47  
48 4) Prospective casualty and property liability issue risks in its deteriorating state must also be considered.

49  
50 The Town Manager's funding-reimbursement approach alleviates the tax impact and allows "right-away"  
51 replacement, thereby obviating concerns and resulting in the soonest optimal layout. The working  
52 waterfront is a small, but very important component of our economy (a local economic factor in the  
53 neighborhood of \$28,000,000), society, and quality of place. An improved Pepperrell Cove infrastructure  
54 would enable it to grow and be an even larger part to all our benefit.

**MEMORANDUM of UNDERSTANDING**  
**BETWEEN the TOWN of KITTERY and the KITTERY PORT AUTHORITY**  
**for MAINTENANCE, REPAIR and IMPROVEMENT**  
**of MUNICIPALLY-OWNED WHARVES, DOCKS, PIERS and LANDINGS**

This Memorandum of Understanding (“MOU” or “agreement”), made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the Kittery Port Authority (“KPA”), acting by and through its Board, and the Town of Kittery, Maine (“Kittery”), acting by and through the Town Council.

**WITNESSETH**

**WHEREAS**, the Kittery Port Authority, a quasi-municipal entity established by Maine Private and Special Law 1961, as amended, is charged to be custodian of municipally-owned wharves, docks, piers and landings, and the Town of Kittery, a body politic and corporate has, exercises, and enjoys all the rights, immunities, powers, privileges and franchises, subject to all the duties, liabilities and obligations provided for in its Town Charter, enacted in Private and Special Law, Chapter 66 of 1967, as amended, are authorized to enter into agreements for the purpose of maintenance, repairs, and improvements of municipally-owned wharves, docks, piers and landings; and,

**WHEREAS**, Kittery is the covenant-deeded owner of the structure known as Frisbee’s Wharf and that known as Fisherman’s Pier, located in the harbor at Pepperrell Cove with all right, title and interest in the land and certain easements upon which they are situated; and

**WHEREAS**, KPA is desirous of major capital improvement program funding by Kittery for improvements to the Wharf and the Pier in the interests of serving local fishermen and recreational boaters; and

**WHEREAS**, Town Charter §6.11(2) allows the making of contracts or leases providing for payments beyond the end of the fiscal year, provided that such action was made or approved by ordinance; and

**WHEREAS**, Kittery deems it to be in the public interest to enter into an agreement with KPA whereby KPA would receive funding support from Kittery for said improvements contingent upon certain prerequisites and guarantees provided by KPA; and

**WHEREAS**, Kittery also deems it to be in the public interest to enter into an agreement with KPA whereby such improvements provided benefits the public safety and welfare;

**NOW, THEREFORE**, in consideration of these premises and mutual benefits to be derived by the parties hereto, **IT IS AGREED** as follows:

**ARTICLE I – PREREQUISITES**

Prior to Kittery enacting an ordinance authorizing a lease-purchase agreement for the funds necessary for this project, KPA must:

A) Have Federal and State approval of the BIG project shift to the Fisherman’s pier and resolution of the 20-year Ship obligation for that pier in writing;

B) Show that it is prepared to apply to Maine Department of Marine Resources (Contractor – Coastal Enterprises Incorporated) for Working Waterfront Access Pilot Program funding 2011 second round no later than November 1<sup>st</sup>; and

C) Through its State Planning Grant, ensure that plans for a new Frisbee Wharf will be “Shovel Ready” for bid by summer’s end in 2011.

**ARTICLE II – FUNDING**

Upon satisfaction by KPA of the prerequisites preceding, Kittery will:

A) Make all necessary arrangements for a five-year municipal lease-purchase agreement at the most favorable terms, conditions, and interest rate realizable within the time period available prior to necessary enactment by ordinance in an amount not to exceed \$353,231.00 to pay for replacement of Frisbee’s Wharf prior to construction start in 2011; and

B) Arrange an “Opinion of Counsel” stating that the lease represents a valid binding obligation on the lessee (Kittery) and that the lease is a qualified tax exempt obligation in accordance with Section 265(b)(3)(B)(ii) of the Internal Revenue Code of 1986, as amended and 36 M.R.S. §1760.2 Exemptions; and

C) Fund \$90,000 from its capital holding reserves and annual grant match accounts as the required match to KPA’s awarded BIG Grant, when Federal funds are obligated and prior to construction start; and

D) Fund such other maintenance, repair and improvements for municipally-owned wharves, docks, piers and landings, and the KPA annual operating budget, through the usual annual capital program and municipal budget development and approval process; and

E) Agree to provide a deed restriction covenant to the State of Maine on the property that it remain in perpetuity “wholly for public use”.

**ARTICLE III – PROJECT MANAGEMENT**

Kittery and the KPA appoint the Town Manager and Harbormaster as the joint project management team for the Frisbee's Wharf and BIG projects, reporting to their respective governing bodies.

**ARTICLE IV – REIMBURSEMENT**

A) KPA agrees that:

1. Appropriate user fees for launch, fuel, pumpout, waste disposal, or any other KPA provided services, in addition to their current customary fees, must be established;

2. Annual KPA revenue in excess of approved budgetary expense is to be dedicated to reimbursement of Kittery's capital program account; and,

3. Capital campaign and other outside funding (e.g. WWAPP, TIF) will be sought by the KPA with any funds received to be used for the Frisbee Wharf project before local funds; and

B) Port and harbor program development efforts will be conducted during the period of this agreement with the objective of the KPA operation achieving self-funded enterprise account status.

**IN WITNESS WHEREOF**, the parties hereto have executed this MOU as of the day and year first above written.

**TOWN OF KITTERY, MAINE**

*By its Town Council*

**KITTERY PORT AUTHORITY**

*By its Board*

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